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WALTER WILHELM LAW GROUP
A Professional Corporation
Riley C. Walter #91839
Kathleen DeVaney #156444
205 East River Park Circle, Ste. 410
Fresno, CA 93720
Telephone: (559) 435-9800
Facsimile: (559) 435-9868
E-mail: rileywalter@w2lg.com

Chapter 9 Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry St.
Tulare, CA 93274

CASE NO. 17-13797

Chapter 9

Date: May 30, 2019
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

SIXTH CHAPTER 9 STATUS REPORT

TO THE HONORABLE RENE LASTRETO, UNITED STATES BANKRUPTCY JUDGE:

Tulare Local Healthcare District, dba Tulare Regional Medical Center ("District"), respectfully comes before the Court and submits this Sixth Chapter 9 Status Report as follows:

**I.
BACKGROUND**

The District filed a Chapter 9 Petition on September 30, 2017 in the face of a threatened shutdown of the hospital by the District's former management and due to very dire financial circumstances.

The District is a public entity organized under the California Local Healthcare District Law and consists of a geographic district located in Western Tulare County

1 where the District is the only provider of acute healthcare services for over 70,000
2 people. The District is governed by an elected board of five persons representing
3 specific districts.

4 The Court has set a fourth Chapter 9 Status Conference for May 30, 2019 at 9:30
5 a.m. so as to be informed as to the status of this case and the progress toward a plan.

6 The purpose of this report is to provide the Court with a report on activities that
7 have occurred since the last Status Conference as well as to inform the Court as to
8 expected activities that will occur in the next phase of this Chapter 9 case.

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10 **II.**
ELIGIBILITY

11 The Court previously fixed a bar date of January 11, 2018 for objections to
12 eligibility based on the District's Motion for an Entry of Order (1) Directing and
13 Approving Form of Notice of Commencement;(2) Setting Deadline for Filing Objections
14 to Petition; and (3) for Relief Under Chapter 9 (ECF No. 169).

15 No objections to eligibility were filed. The order for relief was entered on January
16 26, 2018. Appropriate notices were given.

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18 **III.**
CLAIMS BAR DATE

19 The District filed and served its Motion for Order Fixing Bar Date for Filing Proofs
20 of Claim (ECF No. 290). A bar date of April 10, 2018 was entered and notice was given
21 to all creditors. The District is in the process of evaluating all claims. The District will
22 file such objections as necessary at some point in the future, likely after plan
23 confirmation.

24 **IV.**
POST PETITION ACTIVITIES THROUGH JANUARY 5, 2018

25 The District engaged in and/or accomplished the following between October 1,
26 2017 and January 5, 2018. These activities are not set out in order of importance or
27 chronology. These are highlights of such activities for said period:

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- 1 • The District sought and obtained an Order rejecting the executory contract of
2 Health Care Conglomerate Associates, LLC (“HCCA”). The rejection of the
3 HCCA contract was effective at 5:00 p.m. on November 22, 2017. Beginning the
4 week following the Thanksgiving holiday the District regained control over various
5 bank accounts.
- 6 • Beginning November 23, 2017 the District sought and obtained control over what
7 it believes to be most of the assets and records of the District except for some
8 assets that are unaccounted for, some assets that are in the possession of
9 Southern Inyo Healthcare District, and some records believed to be in the
10 possession of the Tulare County District Attorney’s Office obtained by search
11 warrants.
- 12 • The District entered into agreements with Wipfli/HFS to provide management
13 services to the District including a CEO, CFO, CAO, Project Manager and other
14 key management personnel. The management team is headed by Richard
15 Gianello and reports to the elected board of directors.
- 16 • The District voluntarily and temporarily surrendered its license to the California
17 Department of Public Health.
- 18 • The District regained the ability to hire a skeleton crew of employees who are
19 now directly employed by the District.
- 20 • The District secured control over its facilities.
- 21 • The District entered into a stipulation for the assumption of its various insurance
22 contracts with BETA, a joint powers authority, for insurances, and Phoenix Health
23 Systems regarding IT services, among others.
- 24 • The District commenced the process of evaluating about 1,100 contractual
25 arrangements to determine which of these agreements should be assumed and
26 which should be rejected.

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- 1 • The District commenced the process of filing Motions to Reject Contracts and
- 2 Motions to Assume Contracts and NRRP as well as negotiation of new post-
- 3 petition agreements.
- 4 • The District, upon gaining control over electronic files, filed an amended list of
- 5 creditors and obtained an Order prescribing notice to a limited sub-set of
- 6 creditors.
- 7 • The District obtained an Order setting a hearing on its eligibility for relief under
- 8 Chapter 9. Pursuant to that Order the District has given notice to all persons on
- 9 its list of creditors and the District has published notice in Bond Buyer and the
- 10 Visalia Times Delta. The last date to object to eligibility was January 11, 2018
- 11 and there were no objections to eligibility.
- 12 • The District obtained numerous Orders pursuant to FRBP 2004. The District is
- 13 seeking documents by subpoena prior to conducting examinations.
- 14 • Post-petition the District learned that the prior management company entered
- 15 into an agreement and purported to sell assets of the District to Celtic Leasing for
- 16 \$3 million.
- 17 • The District obtained a claims bar date and has commenced evaluation of all
- 18 claims.
- 19 • The District commenced discussions with Wilmington Trust as the indenture
- 20 trustee for the District's revenue bonds.
- 21 • The District figured out which lawsuits were pending either by or against the
- 22 District in a variety of different courts.
- 23 • The District gained an understanding of the then pending 14 medical malpractice
- 24 suits and established open lines of communication with defense counsel.
- 25 • The District commenced discussions with lenders to obtain credit sufficient to
- 26 enable the District to reopen the hospital and medical clinics to resume providing
- 27 services to the people of the District.

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- 1 • The District had discussions with the California Department of Public Health
- 2 regarding steps necessary for the reopening of the hospital and clinics.
- 3 • The District evaluated its involvement in several civil, non-medical malpractice
- 4 lawsuits pending in Federal and State Courts.
- 5 • The Court appointed a healthcare ombudsman and there have been discussions
- 6 between the District and the ombudsman.
- 7 • The District has joined State Senator Jean Fuller in a request for a state audit as
- 8 to the uses and misuses of bond funds since 2009.

9 **V.**
10 **POST PETITION ACTIVITIES FOR**
11 **JANUARY 6, 2018 TO JUNE 11, 2018**

12 The District has continued to engage in many of the activities described above at
13 Section IV and a further report on activities since January 5, 2018 is as follows:

- 14 • The District engaged in intensive mediation efforts with HCCA to resolve disputes
- 15 between them. The mediation efforts were not successful. The District
- 16 commenced an adversary proceeding against HCCA as is discussed in Section
- 17 VIII of this Status Report. See Section VIII for a discussion of related litigation.
- 18 • The District has been engaged in discussions with various healthcare systems
- 19 concerning such things as management agreements, affiliation agreements and
- 20 leases. In recent days the District has sent out requests for proposals. The
- 21 District received expressions of interest by June 5, 2018. The District is
- 22 optimistic that the RFP process will lead to the selection of a “partner” and this
- 23 will, in turn, lead to a re-opening of the hospital by August 31, 2018 with voter
- 24 approval of a long term lease expected at the November, 2018 election. This
- 25 arrangement is also expected provide the District with adequate financing with
- 26 which to jump start the re-opening of the hospital.
- 27 • In addition to the above described RFP process, the District is also pursuing
- 28 alternative and additional sources of financing.

- 1 • The District is spending significant amounts of time seeking to recover on special
- 2 revenues that are in jeopardy due to the failure of prior management to file
- 3 various reports and cost reports with federal and state agencies.
- 4 • The District is spending significant amounts of time cooperating with the State
- 5 Auditor concerning an audit of the uses and misuses of bond proceeds.
- 6 • The District has successfully resolved several medical malpractice lawsuits and
- 7 has also resolved certain of the civil lawsuits.
- 8 • The District has resolved the lawsuit brought by Senovia Gutierrez for damages
- 9 caused by the failure to honor her election as a director.
- 10 • The District has resolved a lawsuit brought by the former Medical Executive
- 11 Committee who sued the District and others for interfering with its duties and
- 12 responsibilities.
- 13 • The District has continued on with the evaluation of the approximately 1,100
- 14 contracts and leases.
- 15 • A Creditors' Committee has been appointed in this case. The District has
- 16 informed the Committee that it will not pay for Committee counsel. (The US
- 17 Trustee subsequently disbanded the Committee.)
- 18 • The District has evaluated and identified certain excess equipment and assets
- 19 and has commenced a sale of assets utilizing valuation experts in compliance
- 20 with the District Court.
- 21 • The District has continued its discussions with the California Department of
- 22 Public Health, and other state and federal agencies, concerning the terms and
- 23 conditions on which the District will be able to re-open its hospital and clinics.
- 24 • The District is evaluating the changed rules and regulations relating to the
- 25 operation of a rural health clinics.
- 26 • The District removed the Los Angeles County Superior Court lawsuit filed against
- 27 it by HCCA to the U.S. Bankruptcy Court.

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- 1 • The District commenced an adversary proceeding against HCCA seeking to
- 2 invalidate the deed of trust recorded against the Evolutions facility.
- 3 • The District filed an adversary proceeding against MB Financial and Celtic
- 4 Leasing concerning what the District considers to be an unauthorized sale and
- 5 lease back of the District's assets and the deposit of funds into a bank account
- 6 under the control of the principal of HCCA.
- 7 • The District commenced discovery relative to Tulare Asset Management, LLC, a
- 8 company owned and controlled by Dr. Bennie Benzeevi, which owned and
- 9 controlled a non-District bank account into which sale proceeds stemming from
- 10 the sale of the District's assets were deposited.
- 11 • The District commenced efforts to recover financial information from the bank
- 12 into which Tulare Asset Management deposited monies belonging to the District.
- 13 • The District was in the midst of attempting to resolve the treatment and
- 14 allowance of its claims against Southern Inyo Healthcare District.
- 15 • The District was engaged in discussions with the trustee for the revenue bonds
- 16 concerning uses of bond reserves to maintain payments to the revenue
- 17 bondholders.
- 18 • The District was continuing in its cooperation with various federal and state
- 19 regulatory and investigatory agencies relative to pre-petition conduct by the prior
- 20 board of directors and prior manager.
- 21 • The District was engaged in numerous negotiations with parties to contracts,
- 22 leases and vendors.
- 23 • The District was obtaining a valuation of certain of its real property.
- 24 • The District was preparing to obtain a fair market valuation of a potential lease.
- 25 • The District was preparing to submit a ballot proposition for the November
- 26 General Election.

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- 1 • The District was engaged in ongoing discussions with Earlimart Unified School
- 2 District, the County of Tulare and Heiskell Ranches concerning either
- 3 modifications of leases or extensions of new leases of certain facilities.
- 4 • The District was engaged in evaluating its claims for legal malpractice against
- 5 prior attorneys.
- 6 • The Debtor has filed three adversary proceedings seeking to quiet title to certain
- 7 real property belonging to the District.

8 **VI.**

9 **POST PETITION ACTIVITIES FOR JUNE 12 – AUGUST 3, 2018**

10 The District continued to engage in many of the activities described above at

11 Sections IV, V and VI and a further report on activities since August 2, 2018 is as

12 follows.

13 A very considerable amount of time was spent negotiating and documenting the

14 Adventist Health transaction that was approved on August 2, 2018 with a final hearing

15 held on August 7, 2018 granting the relief sought.

16 Time was spent on the litigation involving HCCA. There are no less than eight

17 motions set to be heard by the court on August 15, 2018 (now January 29, 2019).

18 Time was spent engaged in settlement discussions with HCCA. A tentative

19 settlement was reached on August 1, 2018.

20 Preliminary work on the litigation involving MB Financial/Celtic Leasing.

21 Much time was spent working on financing related activities. A lot of time has

22 been spent during the subject period with the review and evaluation of executory

23 contracts and leases.

24 The District was involved in ongoing discussions with the California Department

25 of Public Health, and other federal and state agencies, concerning the terms and

26 conditions on which the hospital will be able to re-open.

27 Much time was spent dealing with revenue bond related issues.

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1 Time was spent obtaining valuations of the District's assets.

2 Time was spent cooperating with the State Auditor.

3 Time was spent working on the ballot proposition for the November 6 election.

4 Time was spent working on inventories of assets of the District.

5 **VII.**
6 **POST PETITION ACTIVITIES FOR PERIOD OF AUGUST 4 - OCTOBER 3, 2018**

7 Much time was spent negotiating the rent rate on the lease of the hospital with
8 Adventist Health.

9 During this interim period several State Court actions and adversary proceedings
10 were settled and settlement documentation drawn.

11 The District successfully prosecuted a Motion for Summary Judgment on the
12 Anderson medical malpractice suit.

13 The District expended time and energy clearing title to its real properties.

14 A very substantial amount of time was spent on matters related to getting the
15 hospital reopened including coordination with State and Federal agencies as to permits
16 needed for reopening.

17 A very considerable amount of time was spent evaluating executory contracts
18 and non-residential real property lease in terms of assumption or rejection. This work
19 will continue over the next three to four months.

20 Time was spent working on matters related to the voter election to be held on
21 November 6, 2018.

22 A considerable amount of energy was devoted to negotiating terms on which
23 various contracts could be adjusted in order to facilitate reopening of the hospital.

24 **VIII.**
25 **POST PETITION ACTIVITIES FOR THE PERIOD OF**
26 **OCTOBER 4, 2018 – JANUARY 21, 2019**

27 During this interim period the District successfully reopened the hospital under
28 the management of Adventist Health. Significant amounts of time were spent on
regulatory and other matters necessary to get the hospital acute care license

1 reinstated.

2 During this period of time the District successfully cleared off disputed liens on its
3 real property.

4 The District obtained a BR 9019 Order re the Compromise with MB Financial and
5 Celtic Leasing.

6 A very significant amount of time was spent on evaluating executory contracts for
7 assumption, rejection and assignment. This work continues.

8 During the interim period the voters overwhelmingly voted in favor of the lease of
9 the real property to Adventist Health.

10 Much time was spent on financing activities which continue.

11 Additional time was spent on a financial audit.

12
13 **IX.**
POST PETITION ACTIVITIES FOR THE PERIOD OF
14 **JANUARY 22, 2019 TO MAY 21, 2019**

15 Much work has been accomplished during this interim period of time. Key
16 activities and accomplishments include:

- 17 • Settled three State Court taxpayer suits.
- 18 • Obtained a loan from the City of Tulare for \$9 million.
- 19 • Negotiated Plan treatments involving all classes of bonds as well as the
20 treatment to be afforded the City of Tulare and Adventist Health.
- 21 • Obtained the services of a solicitation agent to assist with balloting involving the
22 revenue bonds and filed a Motion for Approval of the Solicitation Procedures.
- 23 • Continued with the Assumption, Rejection and Assignment of Executory
24 Contracts.
- 25 • Prepared Objections to overpayment claims asserted by various governmental
26 agencies.
- 27 • Commenced the initial preference and avoidance analysis.
- 28 • Resolved issues related to and asserted administrative claim filed by Cerner.

- Commenced an action against Baker Hostetler and three former directors. Said suit is now pending in the Superior Court for the County of Tulare.
- Accomplished receipt of the change of ownership certificate from the California Department of Health. This allowed the lease with Adventist Health to become effective as of May 15, 2019.
- Prepared multiple versions of the Disclosure Statement and Plan of Adjustment.
- Commenced evaluation of the various claims filed against the debtor.

**X.
PROFESSIONALS**

The District is represented by the McCormick Barstow firm as district counsel and by Walter Wilhelm Law Group as Chapter 9 counsel. The District has engaged bond counsel to advise it with respect to the revenue bonds and general obligation bonds. The District has engaged a malpractice specialist to commence certain actions for recovery of damages. The District has resumed working with pre-petition defense counsel provided by BETA on the pending malpractice actions. Work is underway on the non med-mal civil actions.

**XI.
SOUTHERN INYO HEALTH CARE DISTRICT**

The District has filed a Cost of Administration Claim in the Southern Inyo Health Care District ("SIHCD") Chapter 9 case pending before the Honorable Fredrick E. Clement seeking recovery for assets and monies transferred to SIHCD by the prior manager of both Districts. Counsel for SIHCD was recently disqualified and discussions have slowed.

**XII.
HEALTH CARE CONGLOMERATE ASSOCIATES, LLC**

The District and Healthcare Conglomerate Associates, LLC settled their disputes and all liens and claims have been resolved. The pending litigation between the District and HCCA has been dismissed.

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**XIII.
MB FINANCIAL / CELTIC LEASING**

This adversary proceeding has been settled and an order authorizing the compromise was lodged with the Court on January 21, 2019. The adversary proceeding will soon be dismissed. By virtue of the resolution titled "Disputed Title 2" a substantial amount of medical equipment has been resolved.

**XIV.
NEXT PHASE**

So that the Court might have a "roadmap" as to the next phase in this Chapter 11 case, the following items are expected to be commenced or furthered over the next four months:

- File the Disclosure Statement and Plan with the initial Disclosure Statement hearing to be held July 3, 2019.
- Gear up to file as many as 70 preference actions.
- Continue with analysis of claims.
- Continue on with pending lawsuit against Baker Hostetler and former directors.
- Bring motions dealing with administrative claims and bar dates.

**XV.
PLAN OF ADJUSTMENT**

The District has commenced modeling financial projections relating to its Plan of Adjustment. Preliminary indications are that the District will be able to commence drafting the Disclosure Statement and Plan of Adjustment once the Adventist Health change of ownership takes place. Prior to the next status conference the Debtor expects to know with a high degree of certainty when the Plan will be filed.

Thus, the District anticipates that it will be able to file a Plan sometime in April, 2019, assuming the Adventist Health change of ownership is granted by around the first week of March.

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1 **XVI.**
2 **FURTHER STATUS CONFERENCE**

3 The District suggests to the Court that it would be appropriate to set a further
4 Chapter 9 Status Conference around July 26, 2019 so the Debtor can make a further
5 report to the Court on its reorganization and progress toward reopening and the Plan of
6 Adjustment and report back as to the status of the lease to Adventist Health.

7 **XVII.**
8 **CONCLUSION**

9 WHEREFORE, Tulare Local Healthcare District prays that the Court be apprised
10 accordingly and seeks such relief as is just and proper.

11 Dated: May 23, 2019

WALTER WILHELM LAW GROUP,
a Professional Corporation

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13 By: Riley C. Walter
14 Riley C. Walter, Attorneys for Debtor,
15 Tulare Local Healthcare District, dba
16 Tulare Regional Medical Center
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